IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10538 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANI BACHU DAFER

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/02/2001

ORAL JUDGEMENT

#. The petitioner has been detained as a bootlegger under order dated 16.9.2000 of the District Magistrate, Rajkot.

#. Challenging this order manifold contentions are raised by the learned counsel for the petitioner but as this petition deserves to be allowed only on one ground it is not necessary to refer all those contentions, discuss and decide.

#. The petitioner raised the grievance in para (3) of the representation filed by him against the detention order which reads as under :-

> "It is submitted that the statement of witnesses recorded u/s.161 of Cr.P.C. in respect of the Prohibition case is not supplied to the detenu. In absence of said documents, the detenu could not make effective representation. I therefore, request you to supply the copy of the statement of the witnesses recorded by the police u/s.161 of Cr.P.C."

Despite of this grievance made in the representation the copies of the documents mentioned in that para are not supplied to the petitioner. The petitioner in para (k) of the petition also made the same grievance. The respondents have not cared to file even reply to the Special Civil Application. It is not in dispute that the copies of the statements of the witnesses recorded under Section 161 of Cr.P.C. have not been supplied to the petitioner. These are vital and relevant documents and nonsupply thereof result in deprival of his valuable right to make effective representation against detention order as guaranteed to him under Article 22(5) of the Constitution of India.

#. In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 16.9.2000 is quashed and set aside. The petitioner Gani Bachu Dafer, the detenu, at present in Vadodara Jail, Vadodara be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. As learned counsel for the respondents fairly conceded the position, no order as to costs.

(S.K.Keshote, J.)

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